



Paper No. 5

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JAN 22 2003

**OFFICE OF PETITIONS**

In re Application of :  
Kuo :  
Application No. 09/625,214 :  
Deposited: July 24, 2000 :  
Attorney Docket No. 11509 B :  
For: TREADMILL HAVING A CUSHIONED DECK :  
LIMITING DEVICE :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed October 31, 2002 (certificate of transmission date October 25, 2002), to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181 to withdraw the termination of proceedings in the above-identified application and a petition under 37 CFR 1.53(e) to obtain a filing date for the above-identified applicaiton.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.53(e) is **DISMISSED**.

This application was held abandoned for failure to respond in a timely manner to the Notice of Incomplete Nonprovisional Application (Notice) mailed on September 13, 2000, which stated that no filing date had been accorded to the papers filed on July 24, 2000 because no drawings were included in the filing. A Notice of Termination of Proceedings under 37 CFR 1.53(e) was mailed on October 3, 2002.

Regarding the petition under 37 CFR 1.181, petitioner asserts that a proper response was in fact timely filed during the month of October. The October response is not present in the application file. To prove that a proper reply was timely filed, petitioner has submitted a copy of the response to the Notice. The response, which is a petition under 37 CFR 1.53(e), bears a valid certificate of mailing, dated October 4, 2000, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1).

Thus, the petition under 37 CFR 1.181 is **GRANTED** because petitioner has shown that a proper response to the September 13, 2000 Notice was timely filed. The Notice of Termination of Proceedings under 37 CFR 1.53(e) is hereby vacated.

Regarding the petition under 37 CFR 1.53(e), the copy of the October response includes a date-stamped post card receipt acknowledging receipt of the 7 sheets of drawings in the United States Patent and Trademark Office (Office) on July 24, 2000. M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by

the PTO.” Accordingly, it is concluded that 7 sheets of drawings were received in the Office but later misplaced.

However, the petition under 37 CFR 1.53(e) cannot be granted at this time because the only copy of the originally filed 7 sheets of drawing figures found in the application file were sent by facsimile. As stated in 37 CFR 1.6(d)(4), drawings may not be submitted via facsimile. The application cannot be processed until 7 sheets of drawing figures are received in the Office, either submitted by hand or by mail.

Accordingly, the petition under 37 CFR 1.53(e) is **DISMISSED**.

The application file will be retained in the Office of Petitions until 7 sheets of drawing figures are submitted, either by hand or by mail.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231  
Attn: E. Shirene Willis

By facsimile: (703) 308-6916  
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By hand: Office of Petitions  
2201 South Clark Place  
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Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



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